

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Fred L. Mosley,

:

Plaintiff,

:

v.

:

Case No. 2:05-cv-0048

Hilton Easton Hotel,

:

JUDGE SARGUS

Defendant

:

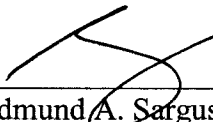
ORDER

This case is before the Court by way of defendant's motion to dismiss (#27). According to the motion, plaintiff has repeatedly failed to appear for a properly-noticed deposition. The last such failure occurred on January 20, 2006. Prior to that, the Court had granted a motion to compel the plaintiff to appear for a deposition (a motion which plaintiff did not oppose) and also awarded monetary sanctions. That order also advised plaintiff that "[h]is failure to comply with any portion of this order may result in the dismissal of his case with prejudice." Order of December 14, 2005 (#20). Plaintiff has not responded to the motion to dismiss, nor has he responded to the accompanying request for additional monetary sanctions based upon his failure to appear for deposition.

Participation in discovery is a necessary part of litigation. Fed.R.Civ.P. 37(b)(2) permits the Court to dismiss a case in which a party refuses to participate in discovery or disregards court orders regarding discovery. Plaintiff has done both. Although the Court is required to consider whether sanctions short of dismissal would adequately address discovery failures, the Court has applied such sanctions here and they have been ineffectual. Further, the record strongly supports a finding that plaintiff's failure is willful, and such willful disregard of Court orders is grounds for dismissal. National Hockey League v .Metropolitan Hockey Club, Inc., 427 U.S. 639

(1976)(per curiam). For all of these reasons, the motion to dismiss (#27) is GRANTED. This action is DISMISSED WITH PREJUDICE. Defendant is awarded an additional \$1,051.75 in monetary sanctions.

Date: 3-3-2006



Edmund A. Sargus, Jr.
United States District Judge